

ASSEMBLY BILL

No. 2632

Introduced by Assembly Member Davis

February 19, 2010

An act to amend Section 166 of the Penal Code, relating to contempt of court.

LEGISLATIVE COUNSEL'S DIGEST

AB 2632, as introduced, Davis. Gang injunctions: violations: contempt of court.

Existing law provides for injunctive relief from the unlawful activities of criminal street gangs. Existing law provides that disobedience of the terms of any court order constitutes a contempt of court, and is punishable as a misdemeanor.

This bill would specify that disobedience of the terms of a gang injunction constitutes contempt of court, and is punishable as a misdemeanor.

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivisions (b), (c), and (d), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of the terms as written of any process or court order or out-of-state court order, lawfully issued by any court, including orders pending trial.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(9) *Willful disobedience of the terms of any gang injunction imposed pursuant to Section 186.22a.*

(b) (1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by telephone or mail, or directly, and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine

1 of five thousand dollars (\$5,000), or by both that fine and
2 imprisonment.

3 (2) For the purposes of sentencing under this subdivision, each
4 contact shall constitute a separate violation of this subdivision.

5 (3) The present incarceration of a person who makes contact
6 with a victim in violation of paragraph (1) is not a defense to a
7 violation of this subdivision.

8 (c) (1) Notwithstanding paragraph (4) of subdivision (a), any
9 willful and knowing violation of any protective order or stay-away
10 court order issued pursuant to Section 136.2, in a pending criminal
11 proceeding involving domestic violence, as defined in Section
12 13700, or issued as a condition of probation after a conviction in
13 a criminal proceeding involving domestic violence, as defined in
14 Section 13700, or elder or dependent adult abuse, as defined in
15 Section 368, or that is an order described in paragraph (3), shall
16 constitute contempt of court, a misdemeanor, punishable by
17 imprisonment in a county jail for not more than one year, by a fine
18 of not more than one thousand dollars (\$1,000), or by both that
19 imprisonment and fine.

20 (2) If a violation of paragraph (1) results in a physical injury,
21 the person shall be imprisoned in a county jail for at least 48 hours,
22 whether a fine or imprisonment is imposed, or the sentence is
23 suspended.

24 (3) Paragraphs (1) and (2) apply to the following court orders:

25 (A) Any order issued pursuant to Section 6320 or 6389 of the
26 Family Code.

27 (B) An order excluding one party from the family dwelling or
28 from the dwelling of the other.

29 (C) An order enjoining a party from specified behavior that the
30 court determined was necessary to effectuate the orders described
31 in paragraph (1).

32 (4) A second or subsequent conviction for a violation of any
33 order described in paragraph (1) occurring within seven years of
34 a prior conviction for a violation of any of those orders and
35 involving an act of violence or “a credible threat” of violence, as
36 provided in subdivisions (c) and (d) of Section 139, is punishable
37 by imprisonment in a county jail not to exceed one year, or in the
38 state prison for 16 months or two or three years.

1 (5) The prosecuting agency of each county shall have the
2 primary responsibility for the enforcement of the orders described
3 in paragraph (1).

4 (d) (1) A person who owns, possesses, purchases, or receives
5 a firearm knowing he or she is prohibited from doing so by the
6 provisions of a protective order as defined in Section 136.2 of this
7 code, Section 6218 of the Family Code, or Section 527.6 or 527.8
8 of the Code of Civil Procedure, shall be punished under the
9 provisions of subdivision (g) of Section 12021.

10 (2) A person subject to a protective order described in paragraph
11 (1) shall not be prosecuted under this section for owning,
12 possessing, purchasing, or receiving a firearm to the extent that
13 firearm is granted an exemption pursuant to subdivision (h) of
14 Section 6389 of the Family Code.

15 (e) (1) If probation is granted upon conviction of a violation of
16 subdivision (c), the court shall impose probation consistent with
17 Section 1203.097 of the Penal Code.

18 (2) If probation is granted upon conviction of a violation of
19 subdivision (c), the conditions of probation may include, in lieu
20 of a fine, one or both of the following requirements:

21 (A) That the defendant make payments to a battered women's
22 shelter, up to a maximum of one thousand dollars (\$1,000).

23 (B) That the defendant provide restitution to reimburse the
24 victim for reasonable costs of counseling and other reasonable
25 expenses that the court finds are the direct result of the defendant's
26 offense.

27 (3) For any order to pay a fine, make payments to a battered
28 women's shelter, or pay restitution as a condition of probation
29 under this subdivision or subdivision (c), the court shall make a
30 determination of the defendant's ability to pay. In no event shall
31 any order to make payments to a battered women's shelter be made
32 if it would impair the ability of the defendant to pay direct
33 restitution to the victim or court-ordered child support.

34 (4) If the injury to a married person is caused in whole or in
35 part by the criminal acts of his or her spouse in violation of
36 subdivision (c), the community property may not be used to
37 discharge the liability of the offending spouse for restitution to the
38 injured spouse required by Section 1203.04, as operative on or
39 before August 2, 1995, or Section 1202.4, or to a shelter for costs
40 with regard to the injured spouse and dependents required by this

1 subdivision, until all separate property of the offending spouse is
2 exhausted.

3 (5) Any person violating any order described in subdivision (c)
4 may be punished for any substantive offenses described under
5 Section 136.1 or 646.9. No finding of contempt shall be a bar to
6 prosecution for a violation of Section 136.1 or 646.9. However,
7 any person held in contempt for a violation of subdivision (c) shall
8 be entitled to credit for any punishment imposed as a result of that
9 violation against any sentence imposed upon conviction of an
10 offense described in Section 136.1 or 646.9. Any conviction or
11 acquittal for any substantive offense under Section 136.1 or 646.9
12 shall be a bar to a subsequent punishment for contempt arising out
13 of the same act.

14 SEC. 2. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.